

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

GUY CLAYTON BARNES
ADC # 93209

PLAINTIFF

v. 5:14CV00159-KGB-JJV

RAY HOBBS; *et al.* DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge Kristine G. Baker. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in a waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a new hearing for this purpose before either the District Judge or Magistrate Judge, you must, at the time you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence to be proffered at the new hearing (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The details of any testimony desired to be introduced at the new hearing in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial

evidence desired to be introduced at the new hearing.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing. Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

Plaintiff, Guy Clayton Barnes, filed this *pro se* action pursuant to 42 U.S.C. § 1983 and alleged that Defendants had violated his Eighth Amendment rights by failing to protect him. Plaintiff also filed a Motion for Leave to Proceed *in forma pauperis* (Doc. No. 1) which the Court granted (Doc. No. 3). On July 10, 2014 Defendants filed a Motion for Order to Revoke IFP Status (“Motion”) (Doc. No. 9) which argued that Plaintiff was a “three-striker” within the meaning of the Prison Litigation Reform Act.¹ The Court, after reviewing the evidence provided by Defendants and considering Plaintiff’s Response (Doc. No. 14) to Defendants’ Motion, found it proper to revoke Plaintiff’s *in forma pauperis* status² (See Doc. No. 15). Accordingly, the Court directed Plaintiff to

¹The PLRA provides that:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on three (3) or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g).

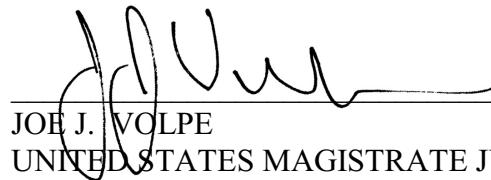
²Plaintiff has filed at least three lawsuits which were dismissed for failure to state a claim upon which relief could be granted. Specifically: *Barnes v. Arkansas, et al.*, 2:10-cv-02030-JLH (W.D. Ark.), dismissed as frivolous and for failure to state a claim; *Barnes v. Harris, et al.*, 5:96-cv-00500-GH (E.D. Ark.), dismissed for failure to state a claim; *Barnes v. McDaniel, et al.*, 5:10-cv-00152-JMM (E.D. Ark.), dismissed for failure to state a claim.

pay the full statutory filing fee of \$400.00 within fourteen (14) days if he wished to pursue this action. (Doc. 15 at 3). The Court cautioned Plaintiff that failure to do so would result in the dismissal of this action without prejudice (*Id.*). Plaintiff has failed to submit the filing fee within the allotted time, and the Court therefore finds it appropriate to recommend dismissal of this action without prejudice. *See Henderson v. Renaissance Grand Hotel*, 267 Fed. App'x 496, 497 (8th Cir. 2008) (“[a] district court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”).

IT IS, THEREFORE, RECOMMENDED that:

1. Plaintiff's Complaint (Doc. No. 2) be DISMISSED without prejudice;
2. The Court certify, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from any Order adopting these recommendations would not be taken in good faith.

DATED this 26th day of August, 2014.



JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE